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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/076,591      | 02/19/2002  | Guy Itzkovitch       | P 265363 Z-3017REG  | 2282             |

909 7590 01/13/2004  
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| EXAMINER |
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BUI, LUAN KIM

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3728

DATE MAILED: 01/13/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/076,591

Applicant(s)

ITZKOVITCH, GUY

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: .

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***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-9 and 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "the second cover portion" and "the second cover" in claims 2, 3, 5, 9, 11, 12, 14 and 18 lack proper antecedent basis.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasudeva (5,887,715). Vasudeva discloses a tool container comprising a case portion (1) having a storage space and a handle (2) and a cover portion (3, 46) pivotally attached to the case portion. The cover portion having an elongated storage space (41, 90) and a secondary cover portion (42) movably mounted with respect to the cover portion for covering the elongated storage space. Vasudeva also discloses the other limitations of the claims except for the handle being connected to the cover portion in lieu of the case portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Vasudeva to provide the handle in the cover portion to facilitate carrying the tool container and since the selection of the

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specific location for the handle such as connected to the cover portion as claimed or to the case portion of Vasudeva would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using the specific location as claimed solves any particular problem or yields any unexpected results. The elongated storage space of Vasudeva is capable of holding a level and the weight of the secondary cover portion is tended to hold the secondary cover portion in its closed position.

5. Claims 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasudeva (5,887,715) in view of Mitchell (4,058,210). Vasudeva discloses a tool container comprising a case portion (1) having a storage space and a handle (2) and a cover portion (3, 46) pivotally attached to the case portion. The cover portion having an elongated storage space (41, 90) and a secondary cover portion (42) movably mounted with respect to the cover portion for covering the elongated storage space. Vasudeva also discloses the other limitations of the claims except for the handle being connected to the cover portion in lieu of the case portion and a level being disposed in the elongated storage space. Mitchell shows a tool case having a small compartment for holding a small level (99) (Figures 4-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Mitchell to modify the tool container of Vasudeva so it includes a level disposed in the elongated storage space to provide more convenience for the user and the handle is connected to the cover portion to facilitate carrying the tool container and since the selection of the specific location for the handle such as connected to the cover portion as claimed or to the case portion of Vasudeva

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would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using the specific location as claimed solves any particular problem or yields any unexpected results.

***Allowable Subject Matter***

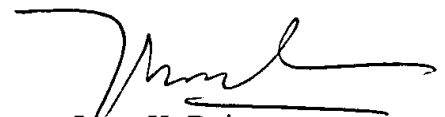
6. Claims 2-8 and 11-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 872-9301. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb  
January 8, 2004

  
Luan K. Bui  
Primary Examiner